IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2716 OF 1998

Dena Bank, a body corporate,
constituted and established under the
Banking Companies (Acquisition and Transfer
of Undertaking) Act, 1970, and having
its Hwead Office at Maker Tower,
Cuffe Parade, Mumbai-400 005, and
also among other branches having one of its
Branch Office at Kurla (W),
Mumbai - 400 070.
...Plaintiffs.

Vs.

1. M/s. Wild Cat Enterprises,
Prop. Shri. Yashwant Vithal Khaire,
Residing at Adarsh Nagar,
Room No.15, Kalina Village,
Mumbai - 400 029.

2. Mr. Vilas Shreepath Kamble,
C/o. Maharashtra Shoes,
Shop No.756, Opp. Gol Building,
Near Police Station, Kurla,
Mumbai - 400 070.

3. Mr. Sunderlal V. Jain,
David Chawl, 446, Shop No.10,
New Mill Road, Kurla (W),
Mumbai - 400 070.
....Defendants.

Mr. John Daniel for the Plaintiffs.

CORAM: A.S. OKA, J.
DATE : JULY 24,2007

ORAL JUDGMENT

1. Heard learned counsel appearing for the plaintiffs. Suit is kept under the caption of "Undefended Suit for Passing Exparte Decree".

2. The plaintiffs have tendered an affidavit of evidence of Mr.C.T.Walde, Sr. Manager of the plaintiffs. The affidavit is marked "X" for identification and is taken on record. Along with the affidavit, the learned counsel for the plaintiffs has tendered original documents together with a list. The said list of documents is marked "Y" (Collectively) for identification and is taken on record.

3. This suit is filed by the plaintiffs for recovery of the amount due and payable by the defendants under the facilities of term loan of Rs.1,00,000/- and Cash Credit of Rs.1,00,000/-. Reliance has been placed on various documents. According to the case of the plaintiffs, the first defendant is a proprietary concern of one Shri.Yeshwant Vithal Khaire. Various documents such as a Demand Promissory Note, a Term Loan Agreement, a Letter of Continuity and an Agreement of Hypothecation of Goods were executed by the first defendant on 20th July,1994 in favour of the plaintiffs. On the same day, the second and third defendants executed a Deed of Guarantee in favour of the plaintiffs under which they agreed to act as guarantors for repayment of the amount by the first defendant under the aforesaid facilities. The

defendants by their letters dated 21st February,1997 and 5th December,1997 promised to pay the dues of the plaintiffs by instalments. As the dues were not paid, a legal notice dated 19th February,1998 was issued by the plaintiffs to the defendants calling upon them to repay the loan amount.

4. The claim of the plaintiffs has been duly proved by the affidavit of Mr.C.T.Walde. The original documents tendered on record are also proved by the evidence of Shri.C.T.Walde. The Certified extract of account of Cash Credit Hypothecation facility is also produced on record. The defendants have not filed their written statement. The prayer in the suit is for grant of further interest at the rate of 17.5% per annum compounded at quarterly rests. Considering the facts and circumstances of the case, further interest will have to be granted at the rate of 17.5% per annum.

5. Hence, suit is decreed in terms of prayer clause (a) and (b) with a modification that further interest will be payable at the rate of 17.5% per annum from the date of the suit till realization or payment.

6. The defendants are ordered to pay the costs of the suit to the plaintiffs.

7. The plaintiffs will be entitled to refund of court fee, if any, in accordance with the rules.

8. The plaintiff is at liberty to execute the decree even before the same is sealed.

9. Certified copy is expedited.

(A.S. OKA, J.)